

The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR.)

June 26, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of April 11, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, AAA, we are formally submitting this request for a Private Letter Ruling under 2 Ill. Admin. Code Section 1200.110 concerning the application of the Retailer's Occupation and Use Taxes ('ROT' and 'UT') to a particular fact pattern. An executed Power of Attorney is attached authorizing us to represent AAA in securing the requested private letter ruling. All information required by 86 Ill. Admin. Code Section 1200.110 is included in an addendum to this letter.

## **I. Statement of Facts**

AAA is legally domiciled in STATE, and commercially domiciled in CITY, Illinois. The Company has numerous offices across the United States, including two locations in Illinois: CITY and CITY2. AAA is primarily engaged in the original installation, repair and maintenance of NAME for non-residential buildings as well as the retail sale of NAME system replacement parts. AAA manufactures and assembles components of NAME systems at its only manufacturing facility located in CITY. The NAME components manufactured there include items such as valves, actuators, sensors, thermostats, switches, controllers, etc. In addition to manufacturing, the CITY facility serves as the location of AAA headquarters. The CITY headquarters facility is the location for the executive management function and all supporting business activities. Some of the supporting activities are provided by the following departments in CITY: Legal, Credit, Accounting, Payroll and Human Resources Departments. There are approximately 1,200 employees at the CITY campus, which contains five buildings.

AAA has five main lines of business: 1) Systems; 2) Quoted Services; 3) Service Agreements; 4) Time and Material; and 5) Non-Installation Retail Sales.

#### **A. Systems**

The Systems line of business is the original installation of AAA NAME systems into new construction. The new construction may be an entirely new building or an addition to an existing building.

#### **B. Quoted Services**

The Quoted Services line of business pertains to 'retrofits.' Retrofits replace old and outdated NAME systems with an entirely new NAME system. Such replacements would include all major mechanical machinery and parts, as well as the ductwork for the system.

#### **C. Service Agreements**

The Service Agreements line of business provides customers with optional service warranties on all AAA material within the NAME systems. When a customer purchases a new or retrofit NAME, they also have the option to purchase a separate service agreement. Depending upon the service agreement selected, the customer pays a flat fee (either monthly, quarterly, semi-annually, or annually) and therefore, is never billed at the time of service. Service agreements vary in duration of coverage, with a minimum of one year, depending upon the client's specified agreement.

#### **D. Time and Material**

The Time and Material line of business also involves separately contracted repair service for AAA NAME systems. However, the customer is billed for time and material on an as needed basis for each service call. For time and material services, the customer has declined purchasing the optional service agreement to cover repairs at the time the NAME system is purchased and installed. Therefore, when the customer calls AAA for repair or general maintenance services, the company pays for the time and materials used in each separate service call.

#### **E. Non-Installation Retail Sales**

The Non-Installation Retail Sales line of business is the over-the-counter retail sale of parts that AAA manufactures and would use or install in its NAME systems. Parts sold include valves, actuators, sensors, thermostats, switches, and controllers.

#### **Illinois Construction Contractor/Retailer**

For Illinois transaction tax purposes, AAA may be considered either a construction contractor or a retailer depending upon the type of transaction. AAA is considered a construction contractor for all jobs that require the tangible personal property to be affixed to real estate. When this occurs, AAA reports State and Local ROT on the cost price of the tangible personal property that is physically incorporated into the realty. The rate of local ROT is determined by which place of business handled the transaction.

AAA will pay UT directly to the State only on purchases of materials made from vendors located outside Illinois.

For items sold in over-the-counter retail sales transactions, AAA acts as a retailer. Not only does AAA act as a retailer when they have over-the-counter part sales in CITY2, but also when they sell and install items that remain classified as tangible personal property after installation. Under both of these instances, AAA incurs the State and Local Retailers' Occupation Tax liability and then remits the taxes to the State. When AAA is unsure or it is impractical to determine how the tangible personal property will ultimately be used, AAA provides their suppliers with a resale certificate, and then assumes the responsibility for the Retailer's Occupation Tax for in-state purchases and Use Tax from out-of-state vendors.

### **Illinois Order Acceptance**

All contracts for System and Quoted Service jobs are received, invoiced, processed, reviewed and approved at the CITY headquarters location, regardless of which AAA office/branch would ultimately provide the service and tangible personal property to complete the job to the customer. The AAA CITY office also evaluates the credit worthiness of all customers, again regardless of which facility originated the order. Additionally, the Legal Department, which is also located at the CITY facility, reviews and approves the content of the sales contracts and the purchase orders for every system and quoted service job that AAA is employed.

Generally, the Service Agreements and Time and Material contract jobs remain at the CITY2, Illinois branch for processing and approval. However, contracts that exceed \$50,000 in value are sent to the CITY headquarters for final review, processing and approval. After a Service Agreement or Time and Materials contract exceeding \$50,000 has been approved at the CITY location, the approved contract is sent back to the customer who must then sign and send the contract to the CITY2 branch to be filled.

All Non-Installation over-the-counter retail sale contracts remain at the CITY2, Illinois location for processing, review, and approval. Consequently, when an over-the-counter retail transaction occurs, it is the CITY2 branch, not the CITY branch, who handles all such orders; regardless of the dollar amount of the contract.

## **II. Questions Presented**

1. What is the appropriate jurisdiction for purposes of assessing local ROT on AAA construction and retail activities?
2. How is the appropriate taxing jurisdiction determined for purposes of assessing Home Rule Municipal Retailers' Occupation Tax, 'ROT', when a contractor/retailer has two locations in Illinois, which are located in two different Home Rule Municipalities (CITY2 and CITY)?

## **III. Conclusions**

1. According to 86 Ill. Admin. Code 130.2075(b)(2), when AAA acts as a construction contractor, and does not know at the time materials are purchased whether those materials will be converted to real estate or remain as tangible personal property, AAA must assume accountability for paying and remitting the

State and Local ROT to the Illinois Department of Revenue. The local ROT rate is determined by which branch, either CITY2 or CITY, handles the construction project. When AAA purchases materials from an out-of-state vendor, it must self-assess and remit Use Tax directly to the Illinois Department of Revenue.

When AAA acts as a retailer, the local ROT jurisdiction is determined by where the purchase orders are accepted. For AAA, where a purchase order is accepted depends upon what line of business that purchase order falls under.

- a. All Systems purchase orders are accepted in CITY. Therefore, the CITY ROT would apply to those contracts.
  - b. All Quoted Service purchase orders are accepted in CITY. Therefore, the CITY ROT would apply to those contracts.
  - c. All Non-Installation Retail Sales purchase orders are accepted in CITY2. Therefore, such over-the-counter sales are subject to the CITY2 ROT.
  - d. For Service Agreement purchase orders less than or equal to \$50,000, acceptance takes place in CITY2. Therefore, the CITY2 ROT would apply to those contracts. For Service Agreement purchase orders greater than \$50,000, acceptance occurs in CITY. Therefore, the CITY ROT would apply to all those contracts over \$50,000.
  - e. For Time and Material purchase orders less than or equal to \$50,000, acceptance takes place in CITY2. Therefore, the CITY2 ROT would apply to those contracts. For Time and Material purchase orders greater than \$50,000, acceptance occurs in CITY. Therefore, the CITY ROT would apply to all such contracts over \$50,000.
2. For Illinois Retailer' Occupation Tax purposes, a retail sale occurs at the location where the retailer/ seller accepts the purchase order. If a purchase order is accepted at the seller's place of business within a municipality that imposes a Home Rule ROT under 86 Illinois Admin. Code Section 270.115(b)(1), the seller will incur that tax. The seller's acceptance of the purchase order is the most important single factor in the occupation of selling.

#### **IV. Legal Analysis**

As mentioned in the Statement of Facts, AAA is both a construction contractor and a retailer. AAA is a construction contractor for all jobs that require tangible personal property be affixed to the real estate. However, when AAA purchases materials, it is not always known at the time of purchase, if these materials will be converted to real estate or whether these materials will be resold as an 'over-the-counter' sale. Consequently, at the time of purchase, AAA provides its supplier with a resale certificate. When AAA does so, it assumes the liability for reporting and paying the State and Local Retailers' Occupation Tax on the cost price of the materials to the Illinois Department of Revenue as required by 86 Ill. Admin. Code 130.2075(b)(2). AAA reports and pays the State and Local Retailers' Occupation Tax by including the cost price of those materials it uses as a construction contractor in its taxable receipts. The Local ROT rate is determined by which branch location handles the construction contract. Therefore, according to 86 Ill.

Admin. Code 130.2075(b)(3), if the CITY home office is responsible for the job, then CITY Retailers' Occupation Tax should be remitted on the return. Conversely, if the CITY2 branch office is accountable, then the CITY2 Retailers' Occupation Tax should be remitted. Id. When AAA purchases items from vendors that are located outside the State of Illinois, AAA should self-assess and remit Use Tax directly to the Illinois Department of Revenue on its return. 86 Ill. Admin. Code 130.2075(c).

The State of Illinois imposes a tax, ROT, upon persons engaged in the business of selling, at retail, tangible personal property. 35 ILCS 120/2; 86 Ill. Admin. Code 130.101. 'Sale at retail' is any transfer of the ownership of or title to tangible personal property to purchasers for use or consumption in exchange for valuable consideration. 35 ILCS 120/2; 86 Ill. Admin. Code 130.201(a)(1). The ROT is measured by the 'gross receipts' received from those sales. 86 Ill. Admin. Code 130.101(a). Under the ROT, the legal incidence of the tax falls on the seller, not the purchaser. 86 Ill. Admin. Code 130.101(d).

The ROT, as well as all other occupation or privilege taxes imposed by the state or by any Illinois municipal corporation or political subdivision, is applied to all retail sales. The Illinois Constitution authorizes Home Rule Municipalities, which are municipalities with a population of at least 25,000, to exercise many powers including imposing taxes. Sec. 6(a), Art. VII, Ill. Const. Home Rule Municipalities may impose a tax, the Home Rule Municipal Retailers' Occupation Tax, 'HRMROT', upon all persons engaged in the business of selling tangible personal property at retail in the municipality. 65 ILCS 5/8-11-1; 86 Ill. Admin. Code 270.101(a). The HRMROT is also applied to the gross receipts of the retail sales that occur within the municipality and the seller incurs the HRMROT liability. 65 ILCS 5/8-11-1; 86 Ill. Admin. Code 270.101(b).

To determine whether a retail sale takes place within a home rule municipality, the Illinois Department of Revenue has stated that **'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling.'** 86 Ill. Admin. Code 270.115(b)(1); Private Letter Ruling 'PLR' ST 91-1008, 12/18/91, General Information Letter 'GIL' ST99-0260, 8/25/99, GIL ST 00-0020, 1/26/00, GIL ST 00-0038, 3/16/00, GIL ST 00-0085, 4/19/00, PLR 90-0857, 12/24/90, GIL ST 93-0569, 11/8/93, PLR ST 92-0333, 6/30/92, PLR ST 87-0340, 5/14/87, GIL ST 98-0137, 4/29/98, GIL ST 00-215, 10/17/00, GIL ST 01-0006, 1/17/01, GIL ST 00-0242, 10/31/00, GIL ST 00-0150 7/20/00, and GIL ST 00-0111, 6/28/00.

The Department assumes, unless there is clear proof otherwise, that the seller accepts the purchase order at the place of business where the seller receives the purchase order from the purchaser. 86 Ill. Admin. Code 270.115(b)(2). If a purchase order, which is an acceptance of the seller's complete and unconditional offer to sell, is accepted in a jurisdiction that imposes a local tax, such as the HRMROT, and the purchase order represents a sale at retail, and the purchasers take physical possession of the tangible property in Illinois, that seller would incur the local HRMROT. Consequently, the rate of tax is determined by the seller's location, not the delivery location. 86 Ill. Admin. Code 270.115(c)(1).

### **Application of Law to AAA**

When applying the above stated facts to the regulations to determine which Home Rule Municipal Retailers' Occupation Tax applies to retail sales made by AAA, it appears that the line of business or the value of the purchase order determines the location where the purchase order is accepted. All Systems and Quoted Services purchase orders have final review and approval at the CITY home office. Therefore, under 86 Ill. Admin. Code 270.115(b)(1), by accepting those purchase orders in CITY, the retail sales for those lines of business occur in CITY. Thus AAA is subject to the CITY HRMROT for those lines of business.

The CITY2 branch is authorized to accept the purchase orders for the Service Agreement and Time and Material lines of business. However, purchase orders exceeding \$50,000 for those two lines of business, must be reviewed, evaluated, and receive final approval at the CITY home office. Consequently, when the purchase orders exceed \$50,000, the actual retail sale for the Service Agreement and Time and Material lines of business occurs in CITY. Therefore, the CITY HRMROT would only apply to those lines of business that exceed \$50,000. All other Service Agreement and Time and Material purchase orders are accepted in CITY2, and therefore would be subject to the Home Rule Municipal Retailers' Occupation Tax imposed by the Village of CITY2.

Under Regulation 270.115(b)(1), the CITY2 HRMROT would apply to all the Non-Installation Retail Sales because all of these purchase orders are accepted at the CITY2 branch, regardless of their dollar value

AAA requests deletion of its name, address and other identifying information prior to public dissemination of this document. If the Department requires any additional information or have any questions regarding this Ruling request, please contact me. Thank you for your consideration in this matter.

From the information contained within your letter, it appears that your client has two types of agreements: 1) a flat rate service agreement, and 2) a time and material agreement. You state that the sale of a service (maintenance) agreement is a retail sale. Please note that the taxability of maintenance agreements is dependent upon whether the charge for the agreement is included in the selling price of tangible personal property. If the charge for a maintenance agreement is included in the selling price of tangible personal property, that charge is part of the gross receipts of the retail transaction and is subject to Retailers' Occupation Tax liability. No tax is incurred on the maintenance services or parts when the repair or servicing is completed.

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be acting as a service provider under the Service Occupation Tax Act. The Service Occupation Tax Act provides that when a service provider enters into an agreement to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, the service provider incurs Use Tax based upon its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3), enclosed.

Your letter states that the service agreements are optional and purchased when a customer purchases a new or retrofit NAME system. In this case, the service agreement is sold separately

from the tangible personal property and therefore your client is a service provider and incurs Use Tax based upon the cost price of the tangible personal property transferred to the customer incident to the completion of the service agreement. You also state that your client will be giving their supplier a blanket certificate of resale for the items they purchase. The provisions of 86 Ill. Adm. Code 130.2075 are then applicable. See discussion below. Pursuant to this regulation, the locality where the service agreement was sold is the locality that has jurisdiction to impose their local tax upon the cost price of the tangible personal property transferred.

Based upon the information contained within your letter, we are concerned about the categorization of the work your client performs. It appears from the limited information provided in your letter that when your client performs the systems, quoted services and time and material lines of business, he acts as a construction contractor and not a retailer.

The provisions of 86 Ill. Adm. Code 130.2075 apply when your client acts as a construction contractor when performing work. Your letter indicates that AAA may provide a resale certificate for all the materials it purchases, whether they are resold over the counter or are affixed to real estate. In this case, the provisions of subsection (b) regarding "When and How Purchasing Contractor May Certify that He Will Assume Accountability for the Tax – Effect of Such Certification" may affect the above analysis. The regulation states, in part, as follows:

"When a purchaser of tangible personal property may use such property by converting it into real estate, but may resell such property over-the-counter, apart from acting as a construction contractor, and where it is impracticable, at the time of purchasing such tangible personal property, for such purchaser to determine in which way he will dispose of the property, such purchaser may certify to his vendor that he is buying all of such tangible personal property for resale and thereafter account to the Department for the tax on disposing of such property."

Under these circumstances, subsection (b)(3) of the regulation states that the construction contractor is required to remit Home Rule Municipal Retailers' Occupation Tax for the "benefit of the entity in which the place of business at or from which the contractor or builder *handles the transaction is located*." Thus, we believe that this provision situates local taxes at the location in which the contractor enters into the construction contract with the customer (e.g., the location at which the customer's agreement to enter into the contract is accepted by the contractor). Thus, construction contracts entered into from the CITY2 office would impose that locality's local tax while construction contracts entered into from the CITY office would impose that locality's local tax. As stated above, if a resale certificate were proffered for materials used in your service agreement work, this same analysis would apply. Otherwise, tax would be paid to suppliers at the rate in effect where the supplier accepts your purchase order.

In instances where your client acts as a retailer, the imposition of various local sales taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. See 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the

Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk